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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7966/2023 & CM APPL. 30646/2023

**VENKATESHWARA HATCHERIES PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Aman Lekhi and Mr.
Arijit Prasad, Senior
Advocates with Mr. Vishal
Khattar, Mr. Ujjwal Sinha,
Ms. Vandana Kapoor and
Ms. Gauri Bansal, Advs.

versus

**UNION OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF ECONOMIC AFFAIRS & ORS.**

..... Respondents

Through: Mr. Ravi Prakash, CGSC
with Mr. Abhishek
Kapoor, GP and Ms. Usha
Jamnal, Adv.
Mr. Zoheb Hossain, Adv.
Special Counsel for ED
with Mr. Vivek Gurnani,
Mr. Kavish Garach and
Ms. Manisha Dubey,
Advs. for R- Directorate of
Enforcement.
Mr. Rachit Bigghe, Adv.
for R-6 (through video
conferencing).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.06.2023

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1. The present writ petition is filed being aggrieved by the communications dated 06.03.2023 and 31.03.2023 (hereafter '**impugned communications**') rejecting the petitioner's application seeking 'No Objection' for the remittance of GBP 26 Million to its wholly owned subsidiary in London, United Kingdom.



2. The petitioner company has invested in a professional football club through its wholly owned subsidiary (WOS), Venky's London Limited since the year 2010.
3. Prior to 22.08.2022, the Overseas Direct Investments (**ODIs**) were made by the petitioner through automatic route in terms of the Foreign Exchange Management Act, 1999 (**FEMA**).
4. The investigations in relation to the investments made were started by the respondent 'Enforcement Directorate' (hereafter '**ED**') in the year 2021.
5. It is stated that the financial commitments, pursuant to the investigations, were made after obtaining proper permission from the RBI in terms of the 2004 Regulations.
6. The RBI, on 06.04.2022, conveyed its 'No Objection' for undertaking financial commitment of GBP 23 Million in the financial year 2022-23 and on 26.05.2022, conveyed its 'No Objection' for undertaking further financial commitment amounting to GBP 14 million towards equity contribution of the WOS, Venkateshwara London Ltd. in the financial year 2022-23.
7. Learned senior counsel for the petitioner submits that in terms of the NOC granted by the RBI, the petitioner had, in the past, undertaken the financial commitments without any hindrance.
8. He submits that the provisions of the Foreign Exchange Management (Overseas Investment) Rules, 2022 were introduced by a notification dated 22.08.2022 superseding earlier rules.
9. He submits that in terms thereof, Rule 10 was introduced, which required 'No Objection Certificate' to be taken from the ED before making any overseas financial commitment or undertaking disinvestment.
10. He submits that for the commitment which had been



undertaken prior to the said Rules coming into force, the petitioner was not required to take a NOC in terms of Rule 10. However, since the AD bank was insisting, the petitioner wrote a letter on 17.01.2023 to the ED for issuance of a 'No Objection' for the remittance of the routine financial commitments towards its creditors and banks.

11. ED, by its letter dated 06.03.2023, did not consider the request and rejected the permission.

12. He submits that the petitioner, thereafter, wrote to the ED to conclude the investigation expeditiously, which started in the year 2021 and also again requested for necessary directions to the Authorised Dealer bank.

13. ED again by letter dated 31.03.2023, refused to issue a 'No Objection Certificate'.

14. The petitioner, thereafter, received a warning / notice dated 27.04.2023 from a Debt Manager Officer, HM Revenue & Customs (HMRC), stating that they have not received payments, which were agreed as per the payments plan and if the money is not paid, they will apply for winding up orders against the Football Club, in which the petitioner has invested through its WOS.

15. On 24.05.2023, the petitioner received a letter from the Football Club informing them about the consequences that can befall in case the funds are not immediately remitted.

16. Learned senior counsel for the petitioner submits that in case the petitioner is not permitted to transfer a sum of GBP 3.54 Million, great prejudice would be caused and the entire petition would become infructuous.

17. He submits that the huge amount of money has been invested by the petitioner overseas and if they are not permitted



to transfer the amount immediately, the entire investments made abroad would go waste, which would not only lead to the financial loss but also a huge loss to the reputation.

18. Learned counsel for the respondent submits that the NOC has not been given due to pendency of the investigation, which involves huge amount of money.

19. He submits that the petitioner cannot be allowed to remit further amounts, which might again be in violation of the FEMA.

20. I have considered the brief arguments advanced by both the parties.

21. *Prima facie*, it appears that the notification dated 22.08.2022 is prospective in nature. It provides that the same has been issued in supersession of the earlier regulations. It further provides that in terms of Rule 10, No Objection Certificate is required before making any financial commitment under the said rules. It, however, does not provide for obtaining the NOC for making financial commitment, which had been provided under the erstwhile Rules.

22. Further, the penalties provided in the FEMA are fiscal in nature. In terms whereof, the entity, which is found to be in violation of the Act, is liable to pay the penalties as levied after adjudication. The said aspect can be duly taken care of by putting appropriate conditions.

23. The permissions were duly granted by the RBI to remit certain amounts. At this stage, the only issue to be considered is the interim arrangement, which can be made till the present writ petition is heard finally and keeping in mind the interest of Revenue.

24. In my opinion, the equities would be balanced if the petitioner is permitted to remit a sum of GBP 3.54 Million on



giving a Bank Guarantee of the same sum in favour of the ED.

25. It is also for the reason that the possibility of the petitioner facing action due to non-remittance, cannot be ruled out.

26. Also, if it is tomorrow adjudicated that the remittance of this amount is in violation, any penalty that may be levied, is secured by the issuance of Bank Guarantee in favour of the ED.

27. In view of the above, purely as an interim measure, without prejudice to the rights and contentions of the parties, the petitioner is permitted to remit a sum of GBP 3.54 Million, subject to the applicable rules and regulations and the non-issuance of NOC by ED under Rule 10 of Foreign Exchange Management (Overseas Investment) Rules, 2022, will not come in way of such remittance subject to the petitioner depositing the Bank Guarantee in favour of the ED for equivalent amount.

28. List for consideration before the Roster Bench on 21.07.2023.

AMIT MAHAJAN, J
(VACATION JUDGE)

JUNE 23, 2023
KDK/SK